Pratt Institute *and* United Automobile, Aerospace & Agricultural Implement Workers of America International Union (UAW), Petitioner. Case 29–RC–10016

August 8, 2003

ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND ACOSTA

On April 3, the Employer requested a stay of the hearing in this case. The Regional Director denied the request. The Employer sought review. On April 11, 2003, the Board granted an interim stay. Today, we grant a stay, pending the Board's decision in two cases currently before the Board.[1]

We recognize that representation cases are to be processed and decided as quickly as possible. And, to that end, we rarely grant a stay of hearing in such cases.[2] Indeed, that rarity of stays bespeaks our strong belief in the expeditious handling of representation cases.[3]

There are circumstances, however, where other policy considerations outweigh the desire for expedition. In the instant case, a hearing would be long and expensive. That hearing may prove unnecessary. That is, if, in the pending cases, the Board holds that graduate assistants are not entitled to representation through NLRB processes, a hearing herein will be unnecessary. We will have saved money and time, both for the U.S. taxpayer and for the private parties. Accordingly, on balance, we believe that it is prudent in this particular case to stay the hearing until a decision is made as to the employee status of graduate assistants.[4]

Further, even if the decisions in *Brown* and *Columbia* uphold extant law or hold only that the graduate assistants *in those cases* are not employees entitled to representation through NLRB processes, those decisions would at least give guidance to the parties herein. The parties could therefore litigate with greater focus and greater expedition. For this reason as well, we believe that a stay is appropriate.

Finally, our colleague says that "only a small portion of the petitioned-for unit consists of graduate assistants." He fails to say that the other portion of the unit consists of undergraduate assistants. The *Columbia University* case also involves undergraduate assistants, and thus the issue as to the status can be resolved in that case.

Based on all of the above, we grant the requested stay.

MEMBER WALSH, dissenting.

On April 11, 2003, I dissented from my colleagues' Order granting the Employer's request for an "interim" stay of the hearing scheduled to commence that day. Today, I must dissent again, this time from my colleagues' Order granting the Employer's "special" request for an indefinite postponement of the hearing.

The Employer cites no precedent supporting its unusual request, and I know of none. This is not surprising given that the policies of the Act "favor prompt completion of representation proceedings." *Versail Mfg., Inc.*, 212 NLRB 592, 593 (1974). See NLRB Casehandling Manual, Part Two, Representation Proceedings, Section 11000, "Agency Objective." ("The expeditious processing of petitions filed pursuant to the Act represents one of the most significant aspects of the Agency's operations. The processing and resolution of petitions raising questions concerning representation . . . are to be accorded the highest priority.")

Although the Board is currently reconsidering *New York University*, 332 NLRB 1205 (2000) (*NYU*), in several pending cases,[1] the fact remains that *NYU* is still the law. While one may speculate whether, when, and how that law may ultimately be changed, such speculation provides no basis whatsoever for delaying the resolution of the representation question raised by the filing of the instant petition.[2] If representation cases were stayed every time there existed a possibility that the governing law might be changed, the Agency's commitment to process them expeditiously would soon become a nullity.

Furthermore, in this case, the parties dispute whether the Board's reconsideration of *NYU* will necessarily be dispositive of the unit issue presented here. The Regional Director carefully considered the parties' arguments on this point and concluded as follows:

[1] E.g., *Brown University*, Case 1–RC–21368, review granted March 22, 2002; *Trustees of Columbia University*, Case 2–RC–22358, review granted March 22, 2002.

[2] The Board's records do not reflect whether, or how often, a stay of hearing has been ordered.

[3] Our colleague's fear that we will stay a hearing every time there is a possibility that governing law might be changed is sheer speculation and is belied by history.

[4] We wish to make it clear that our decision today does not foreshadow any particular disposition of *Brown* or *Columbia.*

[1] E.g., *Brown University*, Case 1–RC–21368, review granted March 22, 2002; *Trustees of Columbia University*, Case 2–RC–22358, review granted March 22, 2002.

[2] Delay in representation cases is especially prejudicial to the exercise of employees' statutory rights. As the Petitioner explains in its May 19, 2003 letter to the Board, the "delay [to date] is particularly troubling because of the discouraging message that it sends to employees regarding their ability to invoke the Board's processes, and to have their rights promptly adjudicated consistent with the language and purposes of the Act. At the most fundamental level, if the Act is to have any meaning, employees seeking union representation must be able to count on a prompt response to their representation petitions."

> I am dubious as to whether the future disposition of the [pending Board cases] will be controlling here, since only a small portion of the petitioned-for unit consists of graduate assistants. The existing case law governing the status of both graduate and undergraduate student employees is fact-intensive, and future changes in the law (if any) may not make it any more feasible to decide the issues raised by the instant case without a hearing fully developing the unique facts pertaining to Pratt's student employees. Although the Board's [future] decisions will offer some guidance with regard to the status of graduate student employees, they are unlikely to be dispositive of the instant case. Accordingly, I have determined that the better course will be to proceed with the processing of the above-captioned petition

My colleagues have not established a compelling reason for overturning the Regional Director's decision to proceed to a hearing based on a showing that the Regional Director's decision is a departure from Board precedent, or that it is clearly in error and that this error prejudicially affects the rights of a party. And given that the Regional Director's decision is in accord with Agency policy, they certainly have not shown an abuse of discretion warranting the granting of what even the Employer terms a "special" request for review.[3]

In sum, there is no dispute that the petition raises a question concerning representation and that a hearing must be held. The only issue is whether the hearing is to be held promptly, in accordance with the Board's historic policy, or whether the hearing is to be delayed indefinitely, in accordance with the Employer's "special" request. In my view, to state the question is to answer it.

[3] As the Employer implicitly acknowledges by describing its request for review as "special," there is no provision in the Board's Rules and Regulations expressly authorizing an appeal from a Regional Director's determination not to stay a hearing.